FREE COPY

No. 236

Office-Supreme Court, U.S.
FILED
SEP 19 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

IDAHO POWER COMPANY,
Petitioner,

v.

THE UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

E. ROY GILPIN,
REID & PRIEST,
Two Rector Street,
New York 6, New York,
Counsel for Petitioner.

K. WILLIAM KOEBEL,
REID & PRIEST,
Two Rector Street,
New York 6, New York,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 236

IDAHO POWER COMPANY,

Petitioner,

v.

THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

The Government agrees with petitioner that the decision of the Court of Claims in petitioner's case is in conflict with this Court's decision in *Commissioner* v. *Estate of Bedford,* 325 U. S. 283 (Mem. 7-14), and joins petitioner in urging that the petition for a writ of certiorari be granted as to the issue involving the exchange premium. It has been the petitioner's position throughout this case, and it continues so to be, that the exchange premium issue is independent of the redemption premium issue since the circumstances of the exchange premium in all respects fall squarely within the rule of this Court in *Estate of*

Bedford. The Government in its Memorandum filed with this Court agrees with petitioner's view. The latter conclusion is clear since the Government urges that this Court's review of the decision below should be confined to the exchange premium issue but should not be extended to the issue involving the redemption premium. Nevertheless the petitioner urges that this Court should also review the redemption premium issue.

This Court's decision in *Estate of Bedford* noted specifically that the definition of "dividend" in Section 115(a) applies to that term "* * * for the purpose of the whole title" (325 U. S. 291-292), *i.e.*, for the purpose of the entire income tax chapter. The *Estate of Bedford* opinion also suggests that the exceptions to the Section 115(a) general dividend definition, which are made in the other subsections of Section 115, apply only to the special situations covered by such other subsections. It has been the petitioner's position that these exceptions generally pertain to the treatment by recipients of distributions in liquidation.

Petitioner submits that the redemption premium, and also the exchange premium, in this case, do not involve, as to it, distributions in liquidation.

Petitioner had outstanding 60,587 shares of 7% and $6 preferred stock before the recapitalization transaction which gave rise to both the exchange and the redemption premiums (Pet. 11a). After the recapitalization transaction was consummated the same number of shares of preferred stock remained outstanding at a lower dividend rate. There was no contraction or liquidation of petitioner's business.

While the exchange of the higher rate for the lower rate preferred stock fell clearly within the reorganization provisions of the tax statute and the rule in *Estate of*

Bedford, as both the Government and petitioner now agree, the replacement of the remaining shares by cash redemption and issuance of like number of new shares involved, as did the exchange transaction, essentially a "boot" payment of earnings and profits, a distribution which could only be a dividend as to petitioner under this Court's application of the general dividend definition stated in *Estate of Bedford*.

Petitioner urges, therefore, that an essential issue here is that where there is an earnings and profits distribution, as to the distributor a "dividend" occurs whether the distribution arises as result of an exchange to which Section 112(c)(2) applies, or through an ordinary cash redemption and re-issue which patently does not involve a liquidation to the distributor, regardless of what the statute may require in treatment of such distribution as to the distributee.

Since facets of the *Estate of Bedford* decision have application as to both types of premium distributions here involved, petitioner respectfully submits that this Court should review not only the exchange premium but also the redemption premium question.

CONCLUSION

The petition for a writ of certiorari should be granted as to the issue involving the redemption premium as well as to the issue involving the exchange premium.

Respectfully submitted,

E. Roy Gilpin,
Reid & Priest,
Two Rector Street,
New York 6, New York,
Counsel for Petitioner.

K. William Kolbe,
Reid & Priest,
Two Rector Street,
New York 6, New York,
Of Counsel.

September, 1958.